SUPREME COURT, U. S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 509

RICHARD LAWRENCE AND JAMES ORANGE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

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APPEAL FROM THE SUPREME COURT OF ILLINOIS

MOTION TO DISMISS OR AFFIRM

Appellee in the above-entitled case moves to dismiss or affirm on the ground that the question presented is so unsubstantial as not to need further argument.

OPINION BELOW

The opinion below is set forth in Appellants' Statement, Appendix, pp. A1-A7. It is reported as *City of Chicago* v. *Richard Lawrence, et al.*, 42 Ill. 2d 461, 248 N. E. 2d 71 (Ill. 1969).

STATEMENT OF THE CASE.

The appellant, James Orange, is a field worker for the Southern Christian Leadership Conference (R. 295, 298) and, although referred to as "Reverend" in the record, is not an ordained minister (R. 298). Richard Lawrence is the pastor of the North Park Methodist Church, President of the Englewood Civic Organization and Chairman of the Englewood Action Committee (R. 330).

On November 12, 1966, the Chicago Police Department was informed by the appellants that a large group of Englewood citizens intended to demonstrate outside the residence of police officer Burleigh Ginkle, a member of the Chicago Police Department (R. 349, 350). The defendant Lawrence, a leader of the group intending to demonstrate, had prepared a written notice which he delivered to the Chicago Police Department telling of the demonstration (R. 349). The Reverend John Rhodes testified on behalf of the defendants that he had called the "watch commander" the night before the planned demonstration and had told him that the group intended to conduct a prayer vigil in front of Officer Ginkle's home (R. 292). The notice prepared by the defendant Lawrence indicated that the demonstrators would form at the Christ Methodist Church at 2:00 P.M. on November 13, 1966 and proceed in automobiles along 63rd Street in Chicago to a designated parking area. The demonstrators would then disembark and march to Officer Ginkle's residence (R. 350).

Sergeant Raymond F. O'Malley, a 20-year veteran of the Chicago Police Department, was ordered by his superiors in the police department to protect Officer Ginkle and his family from undue harassment by the demonstrators (R. 196, 199). Arthur Mooradian, an Assistant Corporation Counsel of the City of Chicago, was assigned

to act as legal advisor to the police during the demonstration (R. 172). It was expected that approximately 100 people would participate in the demonstration in front of Officer Ginkle's home (R. 209). Officer Ginkle had requested that he and his family be protected from harassment (R. 219).

On November 13, 1966, the day of the anticipated demonstration, at about 3:00 P.M., the appellants, James Orange and Richard Lawrence, along with Reverend John Rhodes, arrived at Officer Ginkle's home (R. 299, 300). They walked up the steps of the house and began knocking on the door (R. 300).

Mr. Mooradian and Sergeant O'Malley were parked in a squad car across the street from the house observing what transpired (R. 174, 175). They got out of the squad car and walked over to the appellants (R. 199). Sergeant O'Malley informed the appellants who he was, displayed his identification card, and explained that he was assigned to keep the demonstrators from disturbing Officer Ginkle and his family (R. 199). He told them they could demonstrate on the public way in front of the house but that they were not to go up the steps of the house and they were not to pound on the door or ring the bell (R. 229).

The appellants and the Reverend Rhodes came down the steps of the house and Sergeant O'Malley and Mr. Mooradian began to walk back to the squad car (R. 200). Before they got back, however, Reverend Rhodes, along with the appellants Lawrence and Orange, walked back up the steps and once again began knocking on the door (R. 200). Sergeant O'Malley once again walked back to the appellants and warned them that if they continued this activity he would place them under arrest (R. 201). The Reverend Rhodes went back to his automobile but the appellants again began "pounding" on the door (R. 201). Sergeant

O'Malley walked up the steps of the house, took each man by the arm, and walking them down the steps, told them they were under arrest (R. 201). During all of this time Officer Ginkle was at home (R. 201).

On November 14, 1966, Appellants were charged with violating the disorderly conduct ordinance of the City of Chicago (Section 193-1) and Chapter 11, Section 33 (interfering with the duties of a police officer) of the Municipal Code (R. 3). The four cases involving the two charges against each defendant were consolidated for trial and for all other purposes (R. 78).

The cases were tried before a jury. On February 20, 1967, both appellants were found not guilty of violating the disorderly conduct ordinance. The jury was unable to reach a decision with respect to the interference charge and the trial court declared a mistrial (R. 26).

A new jury was impaneled on October 10, 1967 (R. 106), and entered judgment against each appellant on October 17, 1967, for violating Chapter 11, Section 33 and each was fined $100.00 (R. 52-53).

Appellants filed a Motion for a Judgment Notwithstanding the Verdict of the Jury or, in the alternative, for a New Trial but it was denied (R. 62-66).

Direct appeal was taken to the Illinois Supreme Court on the grounds that Chapter 11, Section 33 of the Municipal Code of Chicago was unconstitutional. The fines levied against the appellants were sustained by the Illinois Supreme Court (Appellants' Statement, Appendix, p. A1-A7). No petition for rehearing was filed in the Illinois Supreme Court.

ARGUMENT.

I.

SECTION 11-33 OF THE MUNICIPAL CODE OF CHICAGO IS A VALID EXERCISE OF THE CITY'S POLICE POWERS AND DOES NOT DENY THE APPELLANTS DUE PROCESS OR INTERFERE WITH THEIR EXERCISE OF FREE SPEECH

Initially it should be noted that Illinois courts, prior to the decision in the instant case, had not construed the City ordinance which prohibits a citizen from interfering with a police officer in the discharge of his duties. The appellants rely on the rationale of the Federal District Court in *Landes* v. *Daley*, 280 F. Supp. 968 (N. D. Ill. 1968). In that case the District Court concluded that Section 11-33 of the Municipal Code of Chicago was invalid because it failed to meet the standards incorporated into a related state statute. The City of Chicago appealed that ruling. However, the appeal was eventually dismissed because of mootness (because the City in the interim had enacted a new ordinance). 410 F. 2d 551 (7th Cir. 1969). Specifically, the appellants point out that the District Court found that the ordinance speaks in terms which are vague and indefinite. The Illinois Supreme Court Opinion in discussing this objection stated (Appellants' Statement, Appendix p. 3):

> "As for the vagueness objection it is true that conduct prohibited by ordinance or statute must be described in terms definite enough to serve as a guide to those to whom it applies. But 'interfere with' and 'hinder' are not under all circumstances terms too indefinite to be applied. An ordinance may describe conduct by their use where the meaning is clear enough to people contemplating such behavior, the test being

> "While the general rule at common law was that the *scienter* was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definition did not in terms include it (*Reg.* v. *Sleep*, 8 Cox C. C. 472), there has been a modification of the view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court. It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so, is an absence of due process of law. But that objection is considered and overruled in *Shevlin Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 69, 70, 30 S. Ct. 663, 666, 54 L. Ed. 930, in which it was held that in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance."

Other cases in support of this position include *United States* v. *Ohio*, 34[illegible] F. 2d 547 (4th Cir. 1965) and *United States* v. *Combs*, 73 F. Supp. 813 (E. D. Ky. 1947).

Contrary to the holding of the District Court, it is not established that due process requires "knowledge and intent" as crucial elements of this sort of crime.

The Illinois Supreme Court Opinion discussed the question of whether or not intent is a necessary element of the offense stated. (Appellants' Statement, Appendix, p. 33)

> "In the case at bar there was nothing inadvertent or unknowing about defendants' interference. It is clear that they acted with full scienter, the officer having in fact advised them of his assignment when he first spoke to them. Nevertheless they disregarded his explanations and went back to their pounding on the door. Their conduct was a plain interference with the officer's efforts to maintain order at the scene of the demonstration. They deliberately ignored his repeated

directions, distracting his attention from the crowd on the corner and making it necessary for him to return and physically escort them from the premises. They are not in a position to raise a constitutional question based on lack of scienter."

II

THE ILLINOIS SUPREME COURT IS NOT BOUND BY THE OPINION OF THE UNITED STATES DISTRICT COURT IN LANDRY v. DALEY

On March 4, 1968, the United States District Court for the Northern District of Illinois, Eastern Division, held Section 47-33 of the Municipal Code of Chicago invalid. *Landry v. Daley*, 280 F. Supp. 968 (N.D. Ill. 1968). As noted above, the Court of Appeals for the Seventh Circuit Court dismissed the appeal in this case on April 23, 1969 as being moot. *Landry v. Daley*, 410 F. 2d 851 (7th Cir. 1969).

The appellants' argument is premised on a misinterpretation of *McNeese v. Board of Education*, 373 U. S. 668 (1963), *Dombrowski v. Pfister*, 380 U. S. 479 (1965), and *Zwickler v. Koota*, 389 U. S. 241 (1967). These cases deal with the doctrine of "abstention" and do not support the appellants' argument.

In *McNeese v. Board of Education*, 373 U. S. 668 (1963) this Court held that the plaintiffs, Negro students in the Illinois public school system, did not have to exhaust state administrative remedies before maintaining an action in a federal court under the Civil Rights Act, saying (p. 671):

> "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

In *Zwickler v. Koota*, 389 U. S. 241 (1967), this Court considered a declaratory judgment action brought in a federal court challenging the validity of a New York statute

suit cases they must be abated and the judgment in each is, therefore, vacated and the charges are ordered dismissed."

It is plain that this case does not uphold the argument that the Illinois Supreme Court is bound by the decision of the Federal District Court in the *Landry* case. Certainly, the District Court is not imbued with the same powers as Congress.

The additional cases cited by the appellants in support of this contention are completely misconstrued. In *Cooper v. Aaron*, 358 U. S. 1, its effect, this Court concerned itself with the question of whether or not state officials are bound to obey Federal Court orders which were promoted on this Court's interpretation of the United States Constitution in *Brown v. Board of Education*, 347 U. S. 483 (1954). This Court in answering the issue in the affirmative said that state legislatures and officials are bound by the decisions of the United States Supreme Court. That case is clearly distinguishable from the instant case where the issue raised by the appellants is whether a decision of a United States District Court is binding on the highest State court.

In *State v. Coleman*, 16 N. J. 16, 104 A. 2d 495 (1954), cert. denied, 348 U. S. 888 (1954), which is cited by appellants (Appellants' Statement, p. 16), the State court adjudged the law ruling that we are making this Court to accept. In that case the defendants argued that a recent decision handed down by the United States Court of Appeals for the Third Circuit was binding on the State's highest court. The court stated (p. 503):

> "In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibilities and assume the same position. There is parallelism but not paramountcy for both sets of courts are governed by the same controlling authority of the Supreme Court."

The law is clear that only this Court has appellate jurisdiction over the highest state courts. *Herndon v. Georgia*, 295 U. S. 441 (1935); *Martin v. Hunter's Lessee*, 1 Wheat. 304, 4 L. Ed. 97 (1816). The Illinois Supreme Court has previously ruled that it would not be bound by a federal court's interpretation of a state statute. In the case of *Rau Schools' Chicago, Inc. v. Cummins*, 12 Ill. 2d 376, 381, 146 N. E. 2d 42 (1957), the state supreme court in determining whether or not it would be bound by a federal court's interpretation of the State Compensation law, stated (p. 381):

> "Thus it is held that State courts are free to decide for themselves all questions of the construction of State constitutions and statutes and are not bound by the construction arrived at by a Federal Court . . ."

This same rationale was expressed in *Acierno v. Calumet H. and S. R. Co.*, 206 Ill. App. 17 (1917), *aff'd.*, 281 Ill. 301 (1918); *Stabile v. Illinois Central R. Co.*, 268 Ill. 339, 109 N. E. 342 (1915); *Lewis v. Illinois*, 356 Ill. 467, 191 N. E. 56 (1934).

For the foregoing reasons it is submitted that the decision in *Landers v. Dalsa*, 280 F. Supp. 968 (N. D. Ill. 1968) is not binding on the Illinois Supreme Court.

III

THE TRIAL OF THE APPELLANTS COMPLIED WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS.

The appellants argue that they were unable to determine the procedural rules which governed their trial and therefore, they were denied due process (Appellants' Statement, p. 17).

While it is true that the appellants filed a notice to take the deposition of Sergeant O'Malley (C 181) and that the City filed a petition to Deny Discovery by Deposition

(C20), it is equally true that *no order* appears in the record granting the City's petition. Absent such an order the Court did not allow the City's petition and the defendants cannot properly raise the issue.

Further, if the appellants felt themselves placed in a procedural "limbo," it was self-imposed. The City did not argue that the Rules of Civil Procedure were not applicable, but, rather, that there was *no reason* for taking Sergeant O'Malley's deposition (C20). If the trial court allowed the petition it was not because of an ambiguity as to applicable rules. The courts of Illinois have repeatedly held that ordinance violation prosecutions are governed by the Rules of Civil Procedure. *City of Chicago v. Jones*, 38 Ill. 2d 368, 373, 232 N. E. 2d 289 (1967); *Village of Maywood v. Houston*, 16 Ill. 2d 117, 138 N. E. 2d 233 (1959).

The Illinois Supreme Court Opinion (Appellants' Statement, Appendix, pp. A1-A6) discussed this point at length:

> "Defendants next claim they were denied the right to take the discovery deposition of Sergeant O'Malley. The record contains a notice for the taking of such a deposition, which defendants say was served on the city, and a petition was filed by the latter to deny discovery by deposition. As the city points out, however, the record contains no ruling or order granting or denying the petition. The only indication that a ruling was made is in certain recitations by defendants to the effect that the petition was allowed. The recitations appear in a motion entitled 'Defendants' Motion for Postponement of Trial, or in the Alternative for Injunction, or Rule or Law for Immediate Arrest, Under Supreme Court Rule 308(a).' Orders appear denying these motions. Defendants now seek to have this court determine generally whether 'municipal ordinance prosecutions' are governed by the Civil Practice Act and by the rules of this court applicable to civil proceedings. We have recently pointed out that a prosecution to recover a

penalty for violation of a municipal ordinance is not a criminal proceeding (*People* v. *Stout*, 41 Ill. 2d 292). It is civil in form, although quasi-criminal in character, and ordinarily is termed a civil action rather than a criminal prosecution. (*Village of Maywood* v. *Houston*, 10 Ill. 2d 117, 119.) As we observed in the *Houston* case, however, 'problems in this area cannot be solved by a mere labeling process.'

"In any event this court cannot decide the abstract question sought to be presented here. We cannot infer what ruling was made, if any, on the city's petition, nor do the grounds appear upon which the court may have acted. Even if it be assumed that discovery depositions may be taken in proceedings of this nature, and that the court granted the city's petition to deny, it can hardly be doubted that grounds might still have existed which would warrant the court's action. In the absence of some showing that appropriate steps were taken to compel the appearance of deponent, and that the court refused discovery on the grounds that such procedure is not available, we must presume in support of the judgment that some valid ground in fact existed. (Cf. Mullen v. People ex rel. Wyatt, 138 Ill. 606) In view of the condition of this record no issue is presented which we can decide."

Finally, the appellants were not prejudiced even if they were denied the taking of Sergeant O'Malley's deposition. The original trial of the appellants resulted in a mistrial and the Record here indicates that counsel for appellants used the transcript of the first proceeding as a deposition of the second trial. (R219). Certainly, he could not have learned any more had he been permitted to take a deposition in the first place.

CONCLUSION.

For the aforementioned reasons, appellee prays that its motion to dismiss or affirm the above entitled cause on the ground that the question presented is so unsubstantial as not to need further argument be allowed.

Dated at Chicago, Illinois: September 18, 1969.

Respectfully submitted,

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